

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.**

In the Matter of:

**Alternative Policy Options for
Managing Capacity at LaGuardia
Airport and Proposed Extension of
the Lottery Allocation – Phase One**

Docket No. FAA-2001-9852;-9854

COMMENTS OF AMERICA WEST AIRLINES, INC.

America West Airlines, Inc. (“America West”) respectfully files these comments in response to the Federal Aviation Administration’s (“FAA”) notice of its proposed “Phase One” “temporary extension of the current administrative lottery allocation beyond September 14, 2001.”¹ As stated in America West’s response to the original lottery proposal, it opposes any further extension of the current allocation regime, which preserves the dominant positions of the incumbent carriers at LGA. America West believes the current lottery allocation and any continuation enhances the position of the entrenched incumbents and prevents much needed competitive new entry. The current policy directly contradicts the critical mandate of the

Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("Air-21") to foster new entrant/limited incumbent competition at slot controlled airports. America West continues to believe that customer outrage over congestion delays at LGA would lead to appropriate market-based resolution of this problem and that FAA's focus at this time should be on ensuring that new entrants can each obtain and operate up to 20 slots as provided in Air 21. In this regard, America West opposes the June 20, 2001 request by the Air Transport Association to extend the Phase II comment period for 180 days until February 13, 2002. Such a delay would likely preserve the lottery allocation and further preserve and extend the dominance of the incumbent carriers at the airport.

If the FAA nonetheless proceeds with its "Phase One" proposal to "maintain the slot lottery allocation that began on January 31, 2001, and to conduct an additional lottery to allocate certain available capacity,"² America West strongly urges that the exemption slots now available for reallocation should go only to new entrant/limited incumbent carriers ("new entrant") unless these carriers cannot use all the available slots. While America West agrees that the first round should go to new entrant/limited incumbents that did not participate in the December round, it believes subsequent rounds should be limited to carriers that operate fewer than 20 slots.

America West alone needs six additional slots to maintain its competitive position between LaGuardia and Columbus, Ohio (CMH), the only city it serves nonstop from LGA. As discussed in greater detail below, limiting the reallocation to new entrants is necessary because the slots now available came primarily from new entrant/limited incumbent carriers. Today, largely as a

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¹See 66 *Fed. Reg.* 31731 (June 12, 2001).

²See *id.* at 31734-35. ("The agency proposes that carriers eligible to participate in the lottery for these 14 exemption slots be initially limited to non-incumbent carriers that did not participate in the December 4 lottery or non-

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result of regulatory policies such as the buy-sell rule, the incumbent carriers continue to control the vast majority of LaGuardia slots. Moreover, they have effectively used Air-21 to strengthen their dominance at LGA and preclude growth by low-cost, low fare new entrants.

I. BACKGROUND

America West is deeply troubled by the continuing exclusion of new entrant carriers from LGA. The Airline Deregulation Act of 1978 was intended to be the Declaration of Independence for airline competition. The Executive branch was directed to: (1) promote the availability of a variety of economic, efficient, and low-priced services; (2) place maximum reliance on competitive market forces and on actual and potential competition; (3) avoid unreasonable industry concentration, excessive market domination, and monopoly power; and (4) encourage the entry of new and existing carriers into air transportation markets and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.³ Twenty-three years later these objectives remain elusive, particularly at LaGuardia. America West and other new entrants have faced enormous obstacles to gaining access at LGA including lack of access to gates and ticket/baggage facilities,⁴ the perimeter rule, as well as the continuing

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incumbent carriers that were unable to select up to four exemption slots during the first round of the December 4 lottery.”) (emphasis added).

³ See 49 U.S.C. § 40101(a)(4), (6), (10), (13).

⁴ While not specifically addressed in the present comments, America West reiterates that major airports must provide a system in which gates and other essential facilities are withdrawn from incumbents for use by non-incumbents especially at LGA where 83% of the gates are subject to long term and exclusive-use agreements with incumbent carriers. See FAA/OST Task Force Study, *Airport Business Practices and Their Impact on Airline Competition*, October 1999, at i-ii. See also GAO, *Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets* (GAO/RCED-97-4, October 1996), at 9-14 (revealing that of 66 largest U.S. airports, 85% of their gates were subject to long-term, exclusive-use leases with incumbent airlines); GAO, *Aviation Competition: Effects on Consumers From Domestic Airline Alliances Vary* (GAO/RCED-99-37, January 1999), at 27 (noting that “operating barriers such as slot controls and gate constraints (long-term leases for one airline’s exclusive use of a large number of gates) have contributed to higher fares on routes to and from some airports.”).

unavailability of slots.⁵ In this regard, the grandfathering of the incumbents through the buy-sell rule made it virtually impossible for new entrants to buy or lease slots. In addition, while the Department of Transportation granted a few exemption slots prior to Air 21, neither the Department nor the FAA has pushed for a substantial reallocation of sufficient slots to foster new entrant competition in major LGA markets.

Without question, Air-21 was intended to provide meaningful relief to one critical obstacle -- slot access -- for new entrants and limited incumbents at LGA where fares have remained among the highest in the country. As Senator McCain reported in 1999 in describing the need for his Air Transportation Improvement Act, a recent GAO study showed that “airfares at [slot controlled] airports continue to be consistently higher than other airports of comparable size.” Senator McCain noted that:

[t]hese most recent findings only strengthen my resolve to finish deregulating the airline industry....Slot controls and the perimeter slot rule are simply federal interference with the market’s ability to reflect consumer preferences. In a free market economy, this is absolutely unfair and unjustified.⁶

Despite the requirements of the Airline Deregulation Act and Air-21, the incumbent carriers have actually extended their dominant slot holdings by initiating excessive service at LGA with smaller regional jets through the small hub/nonhub provisions of Air-21. The incumbents created the congestion, which led to the ensuing limitations on Air-21 slot exemptions imposed by the FAA. In effect, the incumbent carriers have successfully frustrated a primary objective of Air-21 to open competition at LGA. Accordingly, in any short term reallocation or in considering the “alternative policy options” in the months ahead, the FAA must recognize:

⁵ Prior to Air-21, non-incumbents held 3.3% of the total slots at LGA (36 of 999).

- (1) the paramount policy interest of providing significant access to slots for new entrant/limited incumbent carriers at LGA;
- (2) the long, overdue need to abolish the perimeter rule at LGA; and
- (3) the continued failures of the government in achieving the Congressional mandates of the Airline Deregulation Act and Air-21.

Air-21's promise was to help overcome the government's past mistakes on slot policy which served to entrench the incumbent carriers' control of LGA, by ensuring access to at least 20 slots for new entrant/limited incumbents. Accordingly, it is imperative that in allocating the available 14 slots, and in implementing any long-term solution at LGA, the FAA act aggressively to ensure that, each new entrant have access as needed to the 20 slots mandated by Air-21.

II. INCUMBENT CARRIERS AT LGA HAVE SIGNIFICANTLY BENEFITTED FROM AIR-21

As outlined in the initial comments to the FAA lottery proposal in December 2000, America West believes the FAA should have deferred imposing the slot exemption lottery which began on January 2001.⁷ It is clear the increased congestion and delay at LGA was caused directly by the incumbent carriers when they added hundreds of new flights to LGA through their commuter affiliates. While the present FAA notice indicates that by September 2000, nearly 200 new flights were added to LGA from over 600 exemption requests, the notice does not identify that the overwhelming number of requests for exemption slots were made by incumbent carriers. As of November 2000, the incumbents requested 523 and were allocated 197 exemption slots under Air-21, while non-incumbent carriers requested only 77 exemptions and were allocated 49 exemption slots under Air-21. The incumbent carriers obtained four times

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⁶ GAO Report Confirms Need for Aviation Competition Bill, John McCain Press Release March 4, 1999)

⁸ See *Comments of America West Airlines, Inc.*, Docket No. FAA-2000-8278 (Nov. 20, 2000).

the number of Air-21 exemption slots obtained by non-incumbent carriers. Moreover, by use of the Air-21 provisions to obtain new slots, the incumbents were able to use their existing HDR slots to increase service with smaller aircraft to medium hubs. For example, in the LGA - ORF, RDU, RCI and CMH markets, where the incumbents have added a significant number of regional jets, total scheduled departures between August 1998 and August 2001 increased approximately 200% while available seat departures increased only 66%. In light of the recent weakening of demand for air travel and continued consumer concerns over congestion which may lead to a reduction in overscheduling of regional jets in smaller markets, America West reiterates its original position that the FAA should remove the current reallocation restrictions and allow new entrant/limited incumbent carriers to obtain the 20 maximum slot exemptions provided for under Air-21.

If the FAA continues the lottery and relocates only 14 available slots, America West submits that these slots must be reallocated only to non-incumbent carriers. While under the initial lottery new entrants and small communities received 79 and 80 slots respectively, at the time of the June 12 notice the new entrant carriers were operating only 66 slots versus 79 for the small communities. Accordingly, it is logical to reallocate these slots to new entrant carriers. From a policy perspective the reallocation process should not be used to further increased the incumbent carriers' dominance at LGA. For this reason, it is imperative that the FAA reallocate all of the remaining unused/returned slots only to non-incumbent carriers.

III. THE REALLOCATED EXEMPTION SLOTS SHOULD GO TO NEW ENTRANTS

In reallocating the limited number of available slots, the FAA should have no hesitation in declining to grant any further exemptions to incumbent carriers. Clearly, the 14 slot

exemptions available under Air-21 should be given to carriers such as America West, a new entrant post-deregulation carrier that offers the pro-competitive benefits of a significant network system coupled with competitive fares which extend to markets in numerous cities throughout the United States. America West and other new entrants have devoted substantial resources in attempting to establish a presence at LGA but have had no real opportunity to obtain any significant presence. The overall public interest supports the allocation of new slots to new entrants.

In 1992, America West traded slots it held at ORD to American Airlines for four slots at LGA. Following the passage of Air-21, however, American terminated the slot exchange when the LGA slots became immensely more valuable than O'Hare slots. Since that time, America West has been using temporary slots provided by the FAA in order to maintain the CMH-LGA service that America West has been providing for the past nine years. Having served and developed this market for nine years, the CMH-LGA market attracted the entry of Delta and American, two incumbent carriers which held a combined 351 slots at LGA before the Air-21 exemptions. In order to respond to these incumbent carriers and continue to provide competitive service in this market and beyond to Western destinations, it is critical that America West obtains six slots in addition to the six FAA controlled slots currently being operated.⁸ Under the FAA's current proposal, America West would at maximum only have a chance at acquiring 4 exemption slots at LGA. America West and other non-incumbent carriers were entitled by Air-21 to operate have up to 20 slot exemptions at LGA -- a level that has not been achieved by any new entrant/limited incumbent carrier. Given the number of exemption slots now used for small

⁸ America West had been operating four LGA – CMH round trips. However, for the 2001 summer season the FAA could only provide 6 slots so American West was forced to reduce its service. These additional slots would be operated by Mesa, which currently operates the America West Express service to CMH.

community service, it is clear that following the first round allocation to new entrants that did not participate in the December lottery, any remaining slots should be used for new entrants/limited incumbents.

IV. ELIMINATING THE PERIMETER RULE IS A POLICY OPTION THAT MUST BE ADOPTED

America West notes that both the FAA's short and long-term options omit any discussion or proposal to eliminate the current LGA perimeter rule imposed decades ago by the Port Authority of New York and New Jersey ("PANYNJ"). While it will comment in greater detail on this issue in the "Second Phase" of this proceeding, America West submits that the FAA should act now to lift this archaic and anti-competitive rule to achieve important policy benefits. Quite simply, the perimeter rule has long outlived its original purpose which was to reduce ground congestion at LGA and divert leisure traffic to JFK and Newark.⁹ Demand for business traffic from New York City to beyond perimeter cities and the West has increased tremendously in the past 31 years while the rule has - - contrary to its purpose - - fostered a large number of flights to leisure destinations within the perimeter. Despite these absurd effects, the perimeter rule continues and serves the incumbent carriers' interest of limiting competition in the East to West markets. As the Transportation Research Board's study concluded, perimeter rules:

no longer serve their original purpose and have produced too many adverse side effects, including barriers to competition.... These rules arbitrarily prevent some airlines from extending their networks to these airports; they discourage competition among the airports in the region and among the airlines that use these airports; and they are subject to chronic attempts by special interest groups to obtain exemptions.¹⁰

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⁹ See *Western Air Lines v. Port Authority*, 658 F. Supp. 952 (S.D.N.Y. 1986), *aff'd*, 817 F.2d 222 (2d Cir. 1987).

¹⁰ Transportation Research Board, *Special Report 255: Entry and Competition in the U.S. Airline Industry* (1999).

Moreover, the perimeter rule also encourages the use of smaller aircraft operating multiple frequencies in short haul markets. Indeed, the rule promotes exactly the kind of service the FAA and the PANYNJ are seeking to reduce through a new demand management system. If the PANYNJ was serious about marketplace allocation, it would immediately abolish this rule.

Lifting the perimeter rule or at least creating exceptions for new entrants such as America West, which seeks to operate from its primary hubs of Phoenix and Las Vegas, will serve the important policy objectives identified by the FAA, of promoting competition, increasing aircraft size and reducing congestion at LGA.

For these and other reasons, on February 2000, America West requested an exemption from the Department of Transportation to fly directly from LGA to Phoenix and Las Vegas. In Order 2001-4-1, the Department agreed that:

service between LGA and America West's western hubs would likely be quite successful, and given America West's non-incumbent status, the granting of such exemptions would be pro-competitive.

The Department denied the request without prejudice and directed America West to reapply for these exemptions in the present proceeding. The Department stated specifically, that:

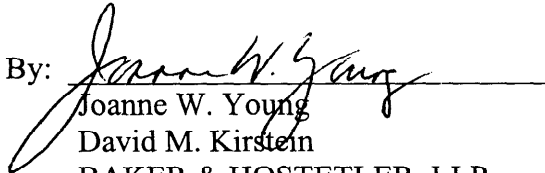
FAA is now considering various alternative longer-term approaches to supplant the slot lottery at LGA. These alternatives may be more conducive to permitting America West's arguments to be favorably considered.

Order 2001-4-1 at 5. Accordingly, America West strongly urges that any extension of the lottery and longer term plan implemented by the FAA and/or the PANYNJ include the elimination of the perimeter rule imposed at LGA.

V. CONCLUSION

Air-21's overriding purpose is to increase competition by reducing slot restrictions at key airports for new entrant and limited incumbent carriers. At the same time, Congress recognized an interest in increasing service from these high density airports to small and non-hub airports. However, increasing service to small communities was not to be achieved at the expense of harming the access promised to competitive new entrant/limited incumbent carriers like America West. Unfortunately, to date, Air-21 has greatly benefited the incumbent carriers at LGA while providing only marginal opportunities for new entrants. As noted American West believes it is not necessary to continue the lottery and that new entrants should be permitted to operate up to 20 slots. However, at a minimum, in the short term, the FAA should use all 14 exemption slots available for lottery in the present Phase One proceeding exclusively for new entrants and limited incumbent carriers until their needs are met. In addition, America West submits that the FAA should either lift the LGA perimeter rule or grant exemptions to new entrants, like American West, that would operate large aircraft to their principal hubs to both reduce congestion and achieve important pro-competitive policy benefits.

Respectfully submitted,

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